

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 RAYMOND ALFORD BRADFORD,

12 Plaintiff,

13 v.

14 V. WATTS, et al.,

15 Defendants.
16

No. 2:21-CV-1846-KJM-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel,
19 ECF No. 15.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Plaintiff fails to argue that appointment of counsel is warranted because he is
10 unable to articulate his claims on his own due to the complexity of the legal issues in dispute or
11 that there is a likelihood of success on the merits. See ECF No. 15, pg. 4. Instead, Plaintiff states
12 that his mental health team has determined that he would “not be permitted to proceed” or
13 “participate in this civil suit and others while in the mental health unit.” Id. Thus, Plaintiff has
14 failed to satisfy the standard set forth in Terrell. Notably, Plaintiff provides no documentation to
15 substantiate his claim that he cannot proceed without counsel due to diagnosed mental health
16 issues.

17 Plaintiff’s stated circumstances is common to many prisoners and, as such, not
18 extraordinary. A review of the filings to date indicates that Plaintiff can articulate his claims on
19 his own, which are neither factually nor legally complex, inasmuch as he independently prepared
20 and filed a civil rights complaint, motion to proceed in forma pauperis, requested injunctive relief,
21 objected to this Court’s findings and recommendations, and requested the assistance of counsel.
22 Further, at this stage of the proceedings, it cannot be said that Plaintiff has established a particular
23 likelihood of success on the merits, as Plaintiff has been given an opportunity to amend his civil
24 rights complaint, see ECF No. 16, which has not yet been filed. As such, exceptional
25 circumstances warranting the appointment of counsel do not currently exist.

26 ///

27 ///

28 ///

///

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request for the appointment of counsel, ECF No. 15, is denied.
2. The Court sua sponte extends the time for Plaintiff to file a first amended complaint pursuant to the March 9, 2022, order.
3. Plaintiff may file a first amended complaint within 30 days of the date of this order.
4. If no first amended complaint is filed within the time allowed therefor, this action will proceed on Plaintiff's original complaint.

Dated: December 9, 2022



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE